

MONDAY, DECEMBER 21, 1998

At 9:30 a.m., the court met in the Library & Courts Building for a continuation of it's court calendar session.

PRESENT: BLEASE, Acting Presiding Justice
 SCOTLAND, Associate Justice
 NICHOLSON, Associate Justice

Bailiff: Rios
Calendar Called.

Civil SAMUEL F. WILSON
No. v.
C021285 CONTINENTAL CABLE ET AL.

Cause called. Daniel A. Briskin, of Schachter, Kristoff, Orenstein, & Berkowitz argued for Defendants-Respondents-X-Appellants. Robert P. Kristoff, of Schachter, Kristoff, Orenstein & Berkowitz appeare on behalf of Defendants-Respondents-X-Appellants but did not argue. Christopher H. Whelan argued for Plaintiff-Appellant-X-Respondents. Cause submitted.

At 10:09 a.m., court recessed. At 10:14 a.m., court reconvened with Acting Presiding Justice Scotland, Associate Justice Nicholson and Associate Justice Puglia.

Civil JAMES GREGORY, INC.
No. v.
C024834 SQUAW CREEK ASSOCIATES ET AL.

Cause called. Louis A. Basile argued for Plaintiff and Appellant. Glenn P. Zwang of Bartko, Zankel, Tarrant & Miller argued for efendants-Respondents. Cause submitted.

Court adjourned at 10:28 a.m., until 9:30 a.m., Tuesday. January .19, 1999.

MONDAY, DECEMBER 21, 1998 CONTINUED

Crim. THE PEOPLE (Not for Publication)

No. v.

C026965 DAVID R. BOYD

The judgment (order of probation) is affirmed.

CALLAHAN, J.

We concur: BLEASE, Acting P.J.
 RAYE, J.

Civil LILIAN TYSON (Not for Publication)

No. v.

C027777 CALIFORNIA STATE BOARD OF EQUALIZATION

The judgment is reversed with directions to the trial court to enter a new order overruling the Board's demurrer. Plaintiff shall recover costs on appeal.

CALLAHAN, J.

We concur: DAVIS, Acting P.J.
 SCOTLAND, J.

Crim. THE PEOPLE (Not for Publication)

No. v.

C027276 RODNEY RAY WILEY

The judgment is affirmed.

SCOTLAND, Acting P.J.

We concur; MORRISON, J.
PUGLIA, J.

Crim. THE PEOPLE (Not for Publication)

No. v.

C028600 VICTOR CHARLES HARVEY, JR.

The judgment is affirmed.

CALLAHAN, J.

We concur: SIMS, Acting P.J.
 SCOTLAND, J.

MONDAY, DECEMBER 21, 1998 CONTINUED

Crim. No. C028037	THE PEOPLE v. HARLEY WAYNE BROWN	(Not for Publication)
	The judgment is affirmed.	
		SCOTLAND, J.
	We concur:	DAVIS, Acting P.J. MORRISON, J.
Crim. No. C027527	THE PEOPLE v. JAMES DALE RODIS	(Not for Publicaiton)
	The judgment is affirmed.	
		CALLAHAN, J.
	We concur:	BLEAASE, Acting P.J. DAVIS, J.
Crim. No. C027312	THE PEOPLE v. JOHN STEPHEN HARROD	(Not for Publication)
	The judgment is affirmd.	
		BLEASE, J.
	We concur:	CALLAHAN, J. PUGLIA, J.
Crim. No. C027310	THE PEOPLE v. JILES LEE WALLACE	(Not for Publication)
	The judgment is affirmed.	
		DAVIS, J.
	We concur:	SIMS, Acting P.J. SCOTLAND, J.
Civil No. C027041	JOHUA R. LILLEY, A MINOR, ETC. v. ELK GROVE UNIFIED SCHOOL DISTRICT ET AL.	(Certified for Partial Publication)
	The judgment is affirmed.	
		SCOTLAND, J.
	We concur:	BLEASE, Acting P.J. CALLAHAN, J.

MONDAY, DECEMBER 21, 1998 CONTINUED

Crim. THE PEOPLE (Not for Publication)

No. v.

C029858 ANTHONY WAYNE RITTER-WREN

The judgment is affirmed.

CALLAHAN, J.

We concur: DAVIS, Acting P.J.
MORRISON, J.

Crim. THE PEOPLE (Not for Publication)

No. v.

C029590 WORKERS' COMPENSATION APPEALS BOARD AND THERESA GONZALES

The opinion and decision of respondent Board after reconsideration is annulled, and the matter is remanded for further proceedings consistent with the views expressed herein.

NICHOLSON, J.

We concur: DAVIS, Acting P.J.
PUGLIA, J.

Crim. THE PEOPLE (Not for Publication)

No. v.

C028018 PLOUSHA GIBSON PERCY

The trial court is directed to prepare an amended abstract of judgment to reflect that the robbery and attempted robbery counts were of the second degree and to forward a certified copy to the Department of Corrections. In all other respects, the judgment is affirmed.

SIMS, Acting P.J.

We concur: NICHOLSON, J.
CALLAHAN, J.

Civil RICHARD A. MOSELEY (Not for Publication)

No. v.

C028157 EASTMAN KODAK COMPANY ET AL.

The judgment is affirmed.

BLEASE, Acting P.J.

We concur: CALLAHAN, J.
PUGLIA, J.

MONDAY, DECEMBER 21, 1998

IN THE MATTER OF THE CONFIRMATION OF THE
APPOINTMENT BY THE GOVERNOR
OF THE HONORABLE ARTHUR G. SCOTLAND
TO THE OFFICE OF PRESIDING JUSTICE OF
THE COURT OF APPEAL
THIRD APPELLATE DISTRICT

The Honorable Pete Wilson, Governor of the State of California, having duly nominated the Honorable Arthur G. Scotland to the office of Presiding Justice of the Court of Appeal, Third Appellate District, to succeed Presiding Justice Robert Puglia, who has retired.

NOW, THEREFORE, the Commission on Judicial Appointments, as provided in Section 16 (d), Article VI of the Constitution of the State of California, hereby in writing confirms such appointment.

Dated: December 21, 1998

RONALD GEORGE
Chief Justice of California

DANIEL E. LUNGREN
Attorney General of California

COLEMAN A. BLEASE
Acting Presiding Justice,
Court of Appeal
Third Appellate District

MONDAY, DECEMBER 21, 1998 CONTINUED

STATE OF CALIFORNIA, EXECUTIVE DEPARTMENT

Know all who shall see these Presents:

That I, Pete Wilson, Governor of the State of California, in the name and by the authority of the People of the State of California, do by these presents, appoint and commission .

ARTHUR G. SCOTLAND
Presiding Justice, Court of Appeal
Third Appellate District

for the term as prescribed by law.

In Witness Whereof, I have hereunto set my hand and caused the great Seal of the State to be affixed at Sacramento, this twenty-first day of December, one thousand nine hundred and ninety-eight.

PETE WILSON
Governor of the State of California

By the Governor:

BILL JONES
Secretary of State

By
Deputy

MONDAY, DECEMBER 21, 1998 CONTINUED

OATH

For the Office of Associate Justice, Court of Appeal, Third Appellate District
I, Arthur G. Scotland, do solemnly swear (or Affirm) that I will support and defend the Constitution of the United States and the Constitution of the State of California against all enemies, foreign and domestic; that I will bear true faith and allegiance to the Constitution of the United States and the Constitution of the State of California; that I take this obligation freely, without and mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties upon which I am about to enter.

/s/ ARTHUR G. SCOTLAND

Subscribed and sworn to before me,
this 21st day of December, AD 1998
RONALD M. GEORGE
Chief Justice of California

MONDAY, DECEMBER 21, 1998 CONTINUED

IN THE MATTER OF THE CONFIRMATION OF THE
APPOINTMENT BY THE GOVERNOR
OF DANIEL M. KOLKEY
TO THE OFFICE OF ASSOCIATE JUSTICE OF
THE COURT OF APPEAL
THIRD APPELLATE DISTRICT

The Honorable Pete Wilson, Governor of the State of California, having duly nominated Daniel M. Kolkey to the office of Associate Justice of the Court of Appeal, Third Appellate District, to succeed Justice Arthur G. Scotland, who has been elevated to the position of Presiding Justice of the Court of Appeal, Third Appellate District.

NOW, THEREFORE, the Commission on Judicial Appointments, as provided in section 16(d), Article VI of the Constitution of the State of California, hereby in writing confirms such appointment.

Dated: December 21, 1998

RONALD M. GEORGE
Chief Justice of California

DANIEL E. LUNGREN
Attorney General of California

ARTHUR G. SCOTLAND
Presiding Justice, Court of Appeal
Third Appellate District

MONDAY, DECEMBER 21, 1998 CONTINUED

STATE OF CALIFORNIA, EXECUTIVE DEPARTMENT

Know all who shall see these Presents:

That I, Pete Wilson, Governor of the State of California, in the name and by authority of the People of the State of California, for by these presents, appoint and commission.

DANIEL M. KOLKEY
Associate Justice, Court of Appeal,
Third Appellate District

for the term as prescribed by law.

In Witness Whereof, I have hereunto set my hand and caused the Great Seal of the State to be affixed at Sacramento, this 21st day of December, one thousand nine hundred and ninety-eight.

PETE WILSON
Governor of the State of California

By the Governor:

BILL JONES
Secretary of State

By
Deputy

TUESDAY, DECEMBER 22, 1998

Civil CONNIE GONZALES (Certified for Publication)
No. v.
C029015 WORKERS' COMPENSATION APPEALS BOARD AND HUNT-
 WESSON, INC.

The decision of the Board is affirmed.

DAVIS, J.

We concur: SIMS, Acting P.J.
 PUGLIA, J.

Civil In re the Marriage of TAMMY and RICHARD ARNO
No. TAMMY CAMPBELL
C027802 v.
 RICHARD ARNO

The judgment (order) is affirmed.

HULL, J.

We concur: DAVIS, Acting P.J.
 NICHOLSON, J.

WEDNESDAY, DECEMBER 23, 1998

Crim. THE PEOPLE
No. v.
C024654 EJAAN DUPREE MCCOY ET AL.
BY THE COURT:

Appellant Lakey's petition for rehearing is granted. The decision filed on November 30, 1998, is vacated in its entirety. Counsel for appellant Lakey and the People are directed to file formal supplemental briefs addressing the following issues:

1. Does Lakey, acting as an aider and abettor, have the benefit of McCoy's claim of imperfect self-defense in the killing of Calvin Willis where McCoy's defense depends entirely on McCoy's perceptions at the instant of the killing?

2. Is the evidence sufficient to allow Lakey to present to a trier of fact Lakey's personal claim of imperfect self-defense regarding Lakey's attempted murder of Tubiya and Simon McCormick?

3. Did Lakey waive these theories of defense by failing to pursue them in the trial court?

Appellant Lakey's supplemental brief shall be served and filed on or before January 20, 1999. Respondent's supplemental brief shall be filed 25 days thereafter.

Dated: December 23, 1998

SIMS, Acting P.J.

In re the Marriage of MITZI and STEVEN CHRISTOPHER
v. (Not for Publication)
STEVEN DON CHRISTOPHER

SIMS, Acting P.J.

THE PEOPLE (Not for Publication)
v.
CURTIS WAYNE GORDON

SIMS, Acting P.J.

We concur: DAVIS, J.
 PUGLIA, J.

WEDNESDAY, DECEMBER 23, 1998 CONTINUED

Juvenile LEROY S. (Not for Publication)
 No. v.
 C030831 THE SUPERIOR COURT OF SUTTER COUNTY
 SUTTER COUNTY DEPARTMENT OF HUMAN SERVICES ET AL.
 The petition and request for a stay are denied.
 SIMS, Acting P.J.

We concur: MORRISON, J.
 CALLAHAN J.

Civil RAOUL SAVOIE (Not for Publication)
 No. v.
 C027403 KAREN DUNFORD ET AL.
 C028183

The judgment in case No. C027403 are affirmed; the orders awarding attorney's fees in case No. C028183 are reversed The parties shall bear their own costs on appeal.

SIMS, Acting P.J.

We concur: RAYE, J.
 CALLAHAN, J.

Crim. THE PEOPLE (Not for Publication)
 No. v.
 C026783 WAYNE LEE GILMORE

The judgment is affirmed.

DAVIS, J.

We concur: SCOTLAND, P.J.
 BLEASE, J.

Crim. THE PEOPLE (Not for Publication)
 No. v.
 C028922 JOSEPH MARK PRENTICE

The judgment is affirmed.

CALLAHAN, J.

I concur: NICHOLSON, J.
 I concur in the result:
 BLEASE, Acting P.J.

WEDNESDAY, DECEMBER 23, 1998 CONTINUED

Civil KOFI OPONG-MENSAH (Not for Publication)
No. v.
C028131 DEPARTMENT OF PERSONNEL ADMINISTRATION

The judgment is affirmed.

BLEASE, Acting P.J.

We concur; NICHOLSON, J.
 RAYE, J.

Juvenile CLAUDIA S. (Not for Publication)
No. v.
C031059 THE SUPERIOR COURT OF SAN JOAQUIN COUNTY
SAN JOAQUIN COUNTY HUMAN SERVICES AGENCY ET AL.

The petition and request for a stay are denied.

SIMS, J.

we concur: SCOTLAND, P.J.
NICHOLSON, J.

Crim. THE PEOPLE (Not for Publication)
No. v.
C027533 JEROME THOMAS RAMSEY

The judgment is affirmed.

CALLAHAN, J.

We concur: SIMS, Acting P.J.
 NICHOLSON, J.

Crim. THE PEOPLE (Not for Publication)
No. v.
C028580 ANGELINE MARIE JONES

All restitution fines ordered by the trial courts in Yuba County (\$600) and Butte County (\$1,000 total) following revocation of defendant's probation are stricken. The judgments shall be amended to reflect reinstatement of the restitution fines that were imposed as a condition of probation and stayed pending completion of probation--\$1,000 in Yuba County, and \$1,200 in Butte County. The *unstayed* restitution fines ordered as a condition of probation also remain in force.

SIMS, Acting P.J.

We concur: DAVIS, J.
 RAYE, J.

WEDNESDAY, DECEMBER 23, 1998 CONTINUED

Civil RON M. SMITH, as Trustee, ETC.
No. v.

C028542 DAVID E. JONES
DEPARTMENT OF REAL ESTATE

The judgment (order) is reversed. DRE shall recover its costs on appeal.

SIMS, J.

We concur: BLEASE, Acting P.J.
CALLAHAN, J.

THURSDAY, DECEMBER 24, 1998

Civil BENNETT WALKER ET AL. (Not for Publication)
No. v.

C025719 LAND'S END REAL ESTAT, INC.

The judgment is affirmed.

DAVIS, Acting P.J.

We concur: MORRISON, J.
PUGLIA, J.